

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - x

4 SECURITIES INVESTOR PROTECTION

5 CORPORATION

6 v. Case No. 08-01789-brl

7 BERNARD L. MADOFF INVESTMENT

8 SECURITIES, LLC, et al,

9 Debtors.

10 - - - - - x

11 IRVING H. PICARD, TRUSTEE FOR

12 THE SUBSTANTIVELY CO Adversary Proceeding:

13 v. Case No. 12-01701-brl

14 RD TRUST, ET AL

15 - - - - - x

16 U.S. Bankruptcy Court

17 One Bowling Green

18 New York, New York

19 May 29, 2013

20 10:11 AM

21 B E F O R E :

22 HON. BURTON R. LIFLAND

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

Page 2

1 HEARING Re (cc-5334) Windels Marx Lane & Mittendorf, LLP's
2 Tenth Application for Allowance of Interim Compensation for
3 Services Rendered and Reimbursement of Actual and Necessary
4 Expenses Incurred from July 1, 2012 through November 30,
5 2012 for Windels Marx Lane & Mittendorf, LLP, Special
6 Counsel, period: 7/1/2012 to 11/30/2012, fee \$1,723,997.00;
7 expenses \$25,804.05

8

9 HEARING Re (cc-5343) Taylor Wessing as Special Counsel to
10 the Trustee's Application for Allowance of Interim
11 Compensation for Services Rendered and Reimbursement of
12 Actual and Necessary Expenses Incurred from July 1, 2012
13 through November 30, 2012 for Taylor Wessing, Special
14 Counsel, period: 7/1/2012 to 11/30/2012, fee \$3,573,113.31;
15 expenses \$2,056,150.34

16

17 HEARING Re (cc-5342) Soroker - Agmon as Special Counsel to
18 the Trustee's Application for Allowance of Interim
19 Compensation for Services Rendered and Reimbursement of
20 Actual and Necessary Expenses Incurred from July 1, 2012
21 through November 30, 2012 for Sorokor - Agmon, Special
22 Counsel, period 7/1/2012 to 11/30/2012, fee \$449,693.55;
23 expenses \$5,530.58

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1 HEARING Re (cc-5337) Greenfield Stein & Senior, LLP as
2 Special Counsel to the Trustee's Application for Allowance
3 of Interim Compensation for Services Rendered and
4 Reimbursement of Actual and Necessary Expenses Incurred from
5 July 1, 2012 through November 30, 2012 for Greenfield Stein
6 & Senior, LLP, Special Counsel, period 7/1/2012 to
7 11/30/2012, fee \$369.00, expenses \$0.00

8

9 HEARING Re (cc-5341) Schlitz & Schlitz as Special Counsel to
10 the Trustee's Application for Allowance of Interim
11 Compensation for Services Rendered and Reimbursement of
12 Actual and Necessary Expenses Incurred from July 1, 2012
13 through November 30, 2012 for Schlitz & Schlitz, Special
14 Counsel, period 7/1/2012 to 11/30/2012, fee \$34,700.82,
15 expenses \$2,255.55

16

17 HEARING Re (cc-5335) Browne Jacobson, LLP as Special Counsel
18 to the Trustee's Application for Allowance of Interim
19 Compensation for Services Rendered and Reimbursement of
20 Actual and Necessary Expenses Incurred from July 1, 2012
21 through November 30, 2012 for Browne Jacobson, LLP, Special
22 Counsel, period: 7/1/2012 to 11/30/2012, fee \$105,139.36,
23 expenses \$26,141.07

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1 HEARING Re (cc-5336) Graf & Pitkowitz Rechtsanwalte GmbH as
2 Special Counsel to the Trustee's Application for Allowance
3 of Interim Compensation for Services Rendered and
4 Reimbursement of Actual and Necessary Expenses Incurred from
5 July 1, 2012 through November 30, 2012 for Graf & Pitkowitz
6 Rechtsanwalte GmbH, Special Counsel, period: 7/1/2012 to
7 11/30/2012, fee \$568,557.29, expenses \$17,031.80
8

9 HEARING Re (cc-5344) Triay Stagnetto Neish as Special
10 Counsel to the Trustee's Application for Allowance of
11 Interim Compensation for Services Rendered and Reimbursement
12 of Actual and Necessary Expenses Incurred from September 11,
13 2012 through November 30, 2012 for Triay Stagnetto Neish as
14 Special Counsel, period: 9/11/2012 to 11/30/2012, fee
15 \$60,964.10, expenses \$383.80
16
17

18 HEARING Re (cc-5340) SCA Creque as Special Counsel to the
19 Trustee's Application for Allowance of Interim Compensation
20 for Services Rendered and Reimbursement of Actual and
21 Necessary Expenses Incurred from July 1, 2012 through
22 November 30, 2012 for SCA Creque, Special Counsel, period:
23 7/1/2012 to 11/30/2012, fee \$6,977.56, expenses \$150.00
24
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1 HEARING Re (cc-5399) La Tanzi, Spaulding & Landreth, P.C.
2 as Special Counsel to the Trustee's Application for
3 Allowance of Interim Compensation for Services Rendered and
4 Reimbursement of Actual and Necessary Expenses Incurred from
5 June 7, 2012 through November 30, 2012 for La Tanzi,
6 Spaulding & Landreth, P.C., Special Counsel, period:
7 6/7/2012 to 11/30/2012, fee \$7,128.00, expenses \$349.40

8

9 HEARING Re (cc-5333) Trustee and Baker & Hostetler LLP's
10 Eleventh Application for Allowance of Interim Compensation
11 for Services Rendered and Reimbursement of Actual and
12 Necessary Expenses Incurred from July 1, 2012 through
13 November 30, 2012 for Baker & Hostetler, LLP, Trustee's
14 Attorney, period: 7/1/2012 to 11/30/2012, fee
15 \$49,126,984.20, expenses \$1,158,883.26

16

17 HEARING Re (cc-5338) Higgs & Johnson (formerly Higgs Johnson
18 Truman Bodden & Co.,) as Special Counsel to the Trustee's
19 Application for Allowance of Interim Compensation for
20 Services Rendered and Reimbursement of Actual and Necessary
21 Expenses Incurred from July 1, 2012 through November 30,
22 2012 for Higgs & Johnson (formerly Higgs Johnson Truman
23 Bodden & Co.), Special Counsel, period: 7/1/2012 to
24 11/30/2012, fee \$56,936.25, expenses \$1,578.21

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1 HEARING Re (cc-5348) Young Conaway Stargatt & Taylor LLP, as
2 Special Counsel to the Trustee's Application for Allowance
3 of Interim Compensation for Services Rendered and
4 Reimbursement of Actual and Necessary Expenses Incurred from
5 July 1, 2012 through November 30, 2012 for Young Conaway
6 Stargatt & Taylor LLP, Special Counsel, period: 7/1/2012 to
7 11/30/2012, fee \$42,709.50, expenses \$7,374.19
8

9 HEARING Re (cc-5346) Werder Vigano as Special Counsel to the
10 Trustee's Application for Allowance of Interim Compensation
11 for Services Rendered and Reimbursement of Actual and
12 Necessary Expenses Incurred from July 1, 2012 November 30,
13 2012 for Werder Vigano, Special Counsel, period: 7/1/2012 to
14 11/30/2012, fee \$14,848.36, expenses \$0.00
15

16 HEARING Re (cc-5347) Williams, Barristers & Attorneys as
17 Special Counsel to the Trustee's Application for Allowance
18 of Interim Compensation for Services Rendered and
19 Reimbursement of Actual and Necessary Expenses Incurred from
20 July 1, 2012 through November 30, 2012 for Williams,
21 Barristers & Attorneys, Special Counsel, period: 7/1/2012 to
22 11/30/2012, fee \$252,813.56, expenses \$0.00
23
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1 HEARING Re (cc-5345) UGGC & Associates as Special Counsel to
2 the Trustee's Application for Allowance of Interim
3 Compensation for Services Rendered and Reimbursement of
4 Actual and Necessary Expenses Incurred from July 1, 2012
5 through November 30, 2012 for UGGC & Associates, Special
6 Counsel, period: 7/1/2012 to 11/30/2012, fee \$91,231.12,
7 expenses \$647.19

8

9 HEARING Re Adversary Proceeding: 12-01701-brl Irving H.
10 Picard, Trustee for the Substantively Co v RD Trust et al;
11 (cc-8) Motion for Entry of Order Pursuant to Rule 15 of the
12 Federal Rules of Civil Procedure as Incorporated by Rule
13 7015 of the Federal Rules of Bankruptcy Procedure Granting
14 Motion for Leave to File a First Amended Complaint Adding PF
15 Trustees Limited In Its Capacity As Trustee of RD Trust as a
16 Defendant

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25 Transcribed by: Sheila Orms

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1 A P P E A R A N C E S :

2 BAKER HOSTETLER

3 Attorneys for SIPA Trustee

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: IRVING H. PICARD, ESQ.

8 DAVID J. SHEEHAN, ESQ.

9 MARC E. HIRSCHFIELD, ESQ.

10

11 BAKER HOSTETLER

12 Attorneys for SIPA Trustee

13 Capital Square, Suite 2100

14 65 East State Street

15 Columbus, OH 43215

16

17 BY: CATHERINE E. WOLTERING, ESQ.

18

19 SiPC

20 Attorneys for SiPC

21 805 15th St., N.W.

22 Suite 800

23 Washington, DC 20005

24

25 BY: KEVIN H. BELL, ESQ.

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1 WINDELS, MARX, LANE & MITTENDORF, LLP

2 Attorney for Windels Marx

3 156 W. 56TH

4 New York, NY 10019

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6 BY: ALAN NISSELSON, ESQ.

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1 P R O C E E D I N G S

2 THE CLERK: SIPC v BLMIS.

3 MR. SHEEHAN: Your Honor, there's actually several
4 matters here this morning. The RD Trust is up first and --

5 THE COURT: Okay.

6 MR. SHEEHAN: -- Your Honor, my colleague,
7 Catherine Woltering will handle that, and then we'll do the
8 fee application.

9 THE COURT: Sounds like a plan.

10 MR. SHEEHAN: Thank you very much, Your Honor.

11 MS. WOLTERING: Good morning, Your Honor. We're
12 here this morning on the trustee's motion for leave to file
13 a first amended complaint, adding PF Trustee's Limited as a
14 defendant in Picard v RD Trust, Adversary Proceeding No. 12-
15 01701. No objections have been filed in this matter.

16 In June of 2012, the trustee filed the adversary
17 proceeding against the defendant seeking \$172 million in
18 subsequent transfers of customer property that originated
19 with BLMIS and was initially transferred to three Fairfield
20 Greenwich Group feeder funds. One of which was the largest
21 BLMIS feeder fund in Fairfield century.

22 At the request of Andres Peter Hedra (ph) which is
23 one of the Fairfield Greenwich Group co-founders, this
24 customer of property was subsequently transferred from those
25 funds to two entities in a trust, including the defendant

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1 Safe Hand Investments and Strongback Holding Corporation.

2 Both are corporations that were formed in the Cayman Islands
3 by Andres Peter Hedra.

4 Based on the trustee's limited records available
5 at this point of litigation, it appears that Andres Peter
6 Hedra set up these two entities, these two corporations, for
7 the purpose of indirectly receiving compensation and
8 partnership distributions associated with ownership
9 interests that he had in various Fairfield Greenwich Group
10 funds and entities.

11 The trustee's records to date indicate that
12 Safehand Investment and Strongback Holding Corporation were
13 both wholly owned by defendant, RD Trust, which was a trust
14 established in 2002 by Andres Peter Hedra in the Cayman
15 Islands, where he and his family were the beneficiaries.

16 It's -- the trustee has just learned who the
17 trustee is for RD Trust. So now having learned that, the
18 trustee seeks to -- seeks leave to file a first amended
19 complaint adding PF Trustee's Limited in its capacity as
20 trustee for RD Trust to the complaint.

21 Rule 15 of the Federal Rules of Civil Procedure
22 made applicable by the Federal Rules of Bankruptcy
23 Procedure, allows a party to amend upon leave of Court. In
24 deciding whether to grant the trustee's motion for leave to
25 amend, the standard is whether or not there's been undue

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1 delay by the parties seeking the amendment, whether the
2 parties seeking the amendment is acting in good faith,
3 whether the opposing party will be prejudiced, and whether
4 the amendment will be futile.

5 In this action, each favor weighs in favor of --
6 each factor weighs in favor of the trustee, the trustee's
7 motion for leave. First, the trustee has acted in good
8 faith without undue delay.

9 In 2012, we are facing the statute of limitations
10 for actions seeking to recover subsequent transfers of
11 customer property received from Fairfield Greenwich Group
12 feeder funds, so the trustee filed this complaint in June of
13 2012 up against that statute.

14 At the time of filing, the trustee was uncertain
15 who -- as to the identity of RD Trust current trustee. The
16 trustee had reason to believe that First Island Trustees
17 Gurnsey Limited (ph) was the original trustee, but was no
18 longer the current trustee, or it was unclear what role they
19 served at best.

20 Despite his best efforts, even after an extensive
21 investigation, the trustee was unable to verify who RD Trust
22 current trustee was. As such, the trustee began the process
23 of effectuating international service of process pursuant to
24 the Hague On First Island Trustee's Gurnsey Limited.

25 In December of 2012, the trustee received a

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1 certificate of service for that -- for indicating First
2 Island was served on behalf of RD Trust. However, we also
3 received a letter from First Island's counsel indicating
4 that by a deed of removal and appointment of new trustee
5 dated November 25th, 2003, First Island was removed as the
6 trustee of the RD Trust in favor of the Cayman Island
7 trustee. But the letter -- but First Island would not
8 disclose who was the current trustee.

9 After we received this letter, the trustee
10 consulted with local counsel in the United Kingdom, as well
11 as retained local counsel in Gurnsey, for the purpose of
12 determining what judicial options he had available to compel
13 disclosure of RD Trust's current trustee.

14 Based on local counsel's advice, in April of 2013,
15 local counsel in Gurnsey sent First Island's counsel a
16 letter indicating that unless they disclosed who RD Trust
17 current trustee was, or the successor trustee to them, that
18 we would be compelled to file a motion -- to initiate
19 proceedings requesting a Norwich Firm of Call (ph), which is
20 an order over there that requires disclosure pre-litigation.

21 Shortly thereafter, trustee's counsel received a
22 call from counsel for Strongback Holding and -- for Safehand
23 Investment and Strongback Holdings, indicating that they
24 also represented the third defendant RD Trust, and that the
25 current trustee was actually PF Trustee's Limited in the

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1 Cayman Islands.

2 While they originally indicated that they could
3 accept service on behalf of RD Trust and PF Trustee's
4 Limited in its capacity as trustee, they subsequently
5 learned from their client, that they were not authorized.

6 So facing the need to effectuate formal service of
7 process again internationally, the trustee filed the instant
8 motion for leave to amend the complaint, naming PF Trustee's
9 Limited in its capacity as trustee for RD Trust.

10 From these facts, it's clear that the trustee has
11 acted in good faith and without undue delay.

12 Second, it's equally clear that in its capacity as
13 trustee for RD Trust, PF Trustee's Limited will not suffer
14 any prejudice if the Court grants the trustee's motion for
15 leave to amend.

16 The complaint has not been answered, and to date,
17 there's been no discovery. Thus, in its capacity as trustee
18 for RD Trust, PF Trustee's Limited will be in the same
19 position as the two existing previously served defendants,
20 and will have a full and fair opportunity to conduct
21 discovery and challenge any and all claims asserted in the
22 first amended complaint.

23 Additionally, because RD Trust wholly owns both of
24 the other defendants, Safehand and Strongback, both of whom
25 were previously served, they've been on notice of this

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1 action since we first filed the complaint.

2 Lastly, because PF Trustee's Limited is
3 represented by the same counsel as the two existing
4 defendants, who have previously been served, it's
5 subsidiaries, Strongback and Safehand, it will have the
6 benefit of any work and research done to date by counsel.

7 Third, and I promise last, the first amended
8 complaint is not futile. The statute of limitations for the
9 purposes of filing --

10 THE COURT: Who is the second counsel?

11 MS. WOLTERING: It's Morrison & Forester in New
12 York.

13 THE COURT: And they found it inappropriate on
14 behalf of their client in the view of transparency to
15 disclose who the actual current owner was?

16 MS. WOLTERING: They ended up disclosing who the
17 current trustee --

18 THE COURT: I know they ended up doing it, but I'm
19 a little concerned over everything that's had to go on, it
20 was almost like dealing with Three Card Monte and Morrison &
21 Forester, I don't think should be engaged in that kind of
22 gamesmanship. You can report back to them, the Court's
23 comment in this regard. Your application is granted.

24 MS. WOLTERING: Thank you. I have a copy of the
25 order here. May I approach?

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1 THE COURT: I'll entertain it.

2 MS. WOLTERING: Thank you.

3 (Pause)

4 THE COURT: I've approved the order.

5 MS. WOLTERING: Thank you.

6 MR. SHEEHAN: Thank you, Your Honor.

7 Good morning, Your Honor.

8 THE COURT: Morning.

9 MR. SHEEHAN: David Sheehan for the trustee from
10 Baker & Hostetler.

11 This is the eleventh application for fee --
12 interim fees and allowances by the trustee and its counsel,
13 as well as an application for conflicts counsel for the
14 trustee, and in addition, application of foreign fee
15 applications by counsel retained by the trustee in aid of
16 his efforts to recover assets for the estate.

17 As I've done in the past, and with the Court's
18 permission, what I would like to do is very briefly go
19 through each of the foreign fee applications first and
20 submit them to Your Honor for your consideration. There is
21 no opposition to these, but I wish to at least try to inform
22 the Court as to the basis for the retention of each of these
23 counsel.

24 If I may, I'll start with Schlitz & Schlitz, which
25 is located in Luxemburg. They have been with us for out --

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1 practically all of these proceedings. They represent us in
2 a number of capacities, as Your Honor may recall. The
3 trustee was actually sued in Luxemburg, and they represented
4 it in connection with that litigation. They're trying to
5 enjoin that, and this matter is currently pending here.

6 And then we also have various funds, such as Lux
7 Alpha and others that were originated there. So we monitor
8 their proceedings, and we haven't participated as yet in any
9 of the proceedings in Luxemburg, we're contemplating that,
10 but what we do, is we engage in watchful waiting, nothing
11 has actually occurred.

12 Other than we have tracked down some funds of a
13 colleague of Sonya Coyens (ph) and we have managed to freeze
14 that, it's about \$2 million. And all that work was taking
15 place working with Schlitz & Schlitz. There, ultimately
16 hopefully that money will be returned to the -- there's a
17 fight over its origin as to whether it is not associated
18 with the Coyen endeavors. We believe we have a very strong
19 case for that, and we believe preliminarily, the Court has
20 indicated that by entering the freeze. And therefore, a
21 likelihood of success on that is good.

22 So all that work was deemed done with us with
23 Schlitz & Schlitz.

24 Higgs and Johnson is in the Cayman Islands. As
25 Your Honor will recall, many of the feeder funds were

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1 incorporated outside the United States, principally in the
2 Cayman Islands, BVI and Bermuda. As a result, we have
3 retained counsel in each of those jurisdictions to assist us
4 with regard to the investigation associated with each of
5 those funds, as well as in each instance, to institute
6 litigation there.

7 And an example of that would be in Kinggate (ph),
8 Kinggate created a -- the fund managers there, Serretti &
9 Grosso (ph) who are defendants in a lawsuit here before Your
10 Honor created Kinggate Management Limited, which was a
11 management company, supposedly engaging in the efforts of
12 examining assets under management, doing due diligence, et
13 cetera. Of course, it did none of that, and we have sued
14 them in Bermuda, because there is substantial funds
15 available in Bermuda. There's over \$300 million in a trust
16 that we are pursuing at this point. And therefore, we need
17 local counsel obviously to represent us there in connection
18 with that liquidation.

19 The liquidators, who we actively negotiate with,
20 I'll talk about that in a minute, are located actually in
21 BVI, that's where the Kinggate funds themselves were
22 incorporated, and we have counsel there, and I'll talk about
23 them in a minute.

24 So what we have is a very active litigation taking
25 place in Bermuda with regard to Kinggate Management, as well

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1 the liquidators of instituted suit as well against Kinggate
2 Management.

3 As Your Honor will recall, we've written
4 application to enjoin that action from going forward.
5 That's been because of negotiations which I'll report on in
6 a moment, has been deferred, and we are hopefully going to
7 resolve all of those issues, even with the receiver, who's
8 been appointed for Kinggate Management in the near term.

9 There's been some witches there, which I'll also
10 talk about in a minute, but in any event, our local counsel
11 there, Higgs & Johnson has been very active in representing
12 us in connection with a number of proceedings that have
13 taken place there.

14 And perhaps most importantly, and something I
15 think Your Honor will find interesting is, is that in the
16 Premial Fund (ph) matter, which is pending there, we had an
17 application made by our adversaries representing the Premial
18 case dismissed. And as Your Honor will recall, there was a
19 Ruben decision when it was pending, and it was to the
20 question of whether or not that would be affirmed, and of
21 course, it was not.

22 And the question became, what is the vitality of
23 ours going forward in foreign jurisdictions, and
24 interestingly enough a judge down there found that we do
25 have, the trustee, Mr. Picard, has the authority to proceed

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1 under their insolvency laws, not under the United States
2 solvency laws, so he sustained our cause of action going
3 forward. And he refused to engage in an offset, which was
4 more or less a mimicking of 502(d).

5 So it was a very interesting proceeding, a very
6 good result for us. As of now, no appeal has been taken by
7 our adversary, but that may indeed happen, and I'll share a
8 copy of that opinion with Your Honor if you would like. I
9 think you'd find it, given your background on Chapter 15,
10 fairly interesting as to how the judge reached his --

11 THE COURT: Who was the author?

12 MR. SHEEHAN: Pardon?

13 THE COURT: Who was the author?

14 MR. SHEEHAN: I knew you'd ask me that. Judge --
15 it's a simple name, it's like Judge Vall (ph) or something.

16 UNIDENTIFIED: Bannister?

17 MR. SHEEHAN: No, it's not that. I'll remember it
18 like a half an hour from now, but I'll remember it, and I'll
19 tell Your Honor, but.

20 In any event, so that's Higgs & Johnson, as you
21 can see, lots of activity by them.

22 Then the next is Soroker and Agmon in Tel Aviv.
23 This is the magnified case that is currently pending before
24 Your Honor. What we have, the essential allegation there
25 is, is that over the course of the fraud, which goes back

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1 into the '80s involving Magnify, and a fellow named Albert
2 Engoyan (ph) who passed away in 1995, and invested in about
3 \$3 million in the mid-'80s into BLMIS. Over the course of
4 the next 20 some odd years, up through 2008, took out over
5 \$130 million.

6 So we are chasing those assets, as it were, using
7 Soroker & Agmon. What they did is, is Engoyan created a --
8 what they call over there, like a charitable organization
9 although really didn't engage in charity, I'll explain that
10 in a minute, called the Yoshia Horowitz (ph) and Horowitz
11 became the vehicle into which the money went and then got
12 distributed. And what they did is, they gave it to a number
13 of organizations in Israel, engaging not in donations, but
14 which would be essentially funding technology transfer
15 engagements. In other words, underwriting research and
16 development of medical techniques and other things, so that
17 they would be investing, and the money would come back. A
18 very complex array of relationships among all those
19 different organizations there.

20 Yoshia Horowitz when we started our suit in front
21 of Your Honor, moved to dissolve, we challenged that,
22 they've since withdrawn that. They are now engaged in
23 active discovery of the Yoshia Horowitz, and ultimately, we
24 will have to make decisions as to where we go down the road,
25 with regard to suing them directly, as well as perhaps

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1 potentially, although not -- and something we're
2 particularly fond of doing, which would be suing the other
3 organizations. But in order to get discovery, which is very
4 different in Israel than it is here, we may very well have
5 to do that.

6 Soroker & Agmon are very active in that on a daily
7 basis, quite frankly. So that is what they are working on.

8 Graf & Pitkowitz is our Austrian counsel. As Your
9 Honor knows, that's where Bank of Medeche and Bank Austria
10 are located. They were, we allege, part and parcel of Sonya
11 Coyer's enterprise that took \$9 billion into BLMIS as a
12 feeder fund. All of her organizations relate and orbit
13 around those two banking activities, and ultimately as you
14 know, in 2006, UniCredit, a major bank in Italy, actually
15 purchased Bank Austria. In fact, most of the money that we
16 are seeking to recover went into Bank Austria during that
17 two year period from '06 to '08.

18 Now, Graf Pitkowitz assists us, because as I've
19 showed Your Honor before, there is an active investigation
20 by the prosecutor in Austria, and unlike the United States,
21 we are able to participate. Mr. Picard, as the trustee,
22 represents all the victims. They recognize him as a victim,
23 and he can participate in those proceedings.

24 We've actually attended hearings where we can work
25 with the prosecutors, submit questions to be asked, obtain

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1 copies of documents. It has been an invaluable assistance
2 to us in terms of our investigation, not only on Ms. Coyen,
3 but the organizations that she created as feeder funds, in
4 order to draw the money into to BLMIS.

5 Next, is SCA Creque, that's in BBI. As you know,
6 when we got into this case, all of the lawyer -- all those
7 funds already had retained counsel down there. We have, as
8 a result, had to retain counsel there as well. BBI, as I
9 mentioned earlier when I was talking about Bermuda, is the
10 home of Kinggate, and a number of other funds. They have
11 assisted us there in terms of the protective actions that
12 we've filed in BBI, to protect the trustee's interests.
13 Obviously, we've also sued all these entities here before
14 Your Honor, but we have those protective actions recognizing
15 that that there may be any number of hurdles for us to cross
16 before we get to the ultimate judgment against these
17 entities.

18 They've been working very hard with us in
19 connection with litigation that's down there, service of the
20 various defendants that we've sued, and they give us advice
21 in relation to our claims against the BBI funds that are
22 domiciled there.

23 Williams Barristers are located in Bermuda. I
24 talked about them in connection with the Cayman law firm.
25 This is where KML is located. This is where we have

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1 instituted litigation that is ultimately going to be, we
2 believe, the seat of all the litigation involving Kinggate.
3 They actively will be tried there, because of the presence
4 of the funds that are there, as well as the fact that
5 jurisdiction over Serette and Grosso (ph), which has not
6 been challenged yet here before Your Honor, but eventually
7 at some point we believe it will be, it has been in the past
8 by them, that we believe that ultimately we may end up
9 trying this case in Bermuda. Therefore, our Bermuda counsel
10 has been of great assistance to us preparing for that.

11 We are also working with the liquidators counsel,
12 as I say, we're trying to be very collaborative with them.
13 And while I can't get into the exact details of -- because
14 it's not final or been worked out, some of them are
15 relatively well known because they're in the press between
16 us and the Kinggate liquidators.

17 As Your Honor will recall, some time ago actually,
18 we thought we had a deal and what happened is that the end
19 low (ph) excursion I guess we could call it into the
20 district court, that had something of an impact on the
21 claims trading that was taking place, so it went down in
22 value, and the banking institution was DBSI, also publicly
23 known, was ultimately sued by the Kinggate liquidators,
24 basically on a specific performance claim, trying to compel
25 them to close the deal.

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1 Then afterwards we had a very good result in Katz
2 Will (ph) on -- the claims went back up, all of a sudden now
3 DBSI was trying to compel the deal and the liquidators were
4 not. That resulted in the three parties getting together
5 over the last six months in trying to work out a deal. We
6 are very, very close to having that done.

7 There is one wild card that is well known in the
8 public, and which we've discussed with the representatives
9 of the government, and that is the \$2.35 billion in the
10 hands of the U.S. Attorney's office, and how that's going to
11 be distributed, and whether or not assignments of claims
12 agents will be recognized, and what capacity they'll be able
13 to take any of the money out of that forfeiture fund.

14 As a result, we've had ongoing negotiations with
15 the DOJ, the Special Master, as well with these parties.
16 It's an ongoing, as I say, negotiation. It's been
17 fascinating in terms of how it may eventually turn out.

18 In the past, the DOJ, as in the Adelphia case, has
19 not honored any assignments. We're suggesting that this is
20 a bit different here. We already have \$3.4 billion of
21 assigned claims in this case. I think it would wreak havoc
22 upon the customers if all those were suddenly going to be
23 cast into litigation as a result of nothing in distribution
24 from the Special Master. It also inhibits our ability to
25 obtain financing, because that's not an insignificant amount

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1 of money. Not us get financing, obviously the trustee
2 doesn't purchase claims, but that the claims people
3 themselves will have some inability to get financing as a
4 result of the question mark associated with the forfeiture
5 fund.

6 What we have been doing is not only negotiating to
7 get that result, but we've also been negotiating with the
8 idea that there can be a self-funding mechanism. As Your
9 Honor knows, we've already distributed over \$5 billion in
10 this case, which is now raised the value of claims and
11 claims trading to 83 cents at the last quote, so that there
12 is a feeling among that community, that there will be a
13 continued distribution by the trustee. And that as a result
14 of that, we believe that we can probably in effect, self-
15 finance this by virtue of their continued recoveries of the
16 trustee.

17 We've worked out with our colleagues at
18 AlixPartners, algorhythms that will give us the ability to
19 obviously enhance the fund, by taking in monies that will
20 essentially, not dissimilar as Your Honor will recall, from
21 what we did in Catts Will Fund (ph) where we basically took
22 an assignment of their claims, and therefore, we get paid
23 every time there is a distribution by the trustee from the
24 Catts Will Fund claims that were allowed.

25 So fairly complicated, and I gave that to Your

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1 Honor in very much tree top fashion, but that's exactly
2 what's going on right now in Kinggate, why we have active
3 counsel with us in Bermuda, BBI, and the Caymans, assisting
4 us in this endeavor. It's a very, as I say, complex
5 transaction. Complicated, again Your Honor would appreciate
6 this, by virtue of the fact that we're told that the law, as
7 Your Honor well knows, and DBI isn't necessarily the same as
8 here, the liquidators use that all the time, so we need our
9 local counsel to interpret that, and give us assistance with
10 regard to it, in terms of what can be approved and what
11 cannot.

12 So it's a very active practice, just orbiting
13 around that one aspect of the case, which is only as I say,
14 one aspect of the case. There's many, many others that take
15 place every day.

16 Then we have Taylor and Wessing. This is probably
17 by far the largest fee app by foreign counsel. Taylor
18 Wessing is our counsel in the United Kingdom. There are
19 several things occurring right now.

20 One of them, and most importantly is, is that
21 there is a trial that's about to start on June 10th in the
22 United Kingdom. The defendants in that case are the
23 directors and officers of MISL, which was Mr. Madoff's
24 London operation, which was essentially a proprietary
25 trading desk, and also was utilized by him to round trip

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1 monies back and forth between the various accounts at BLMIS.
2 And at the same time, to pay, we allege, money to Ms. Coyer
3 that -- to which she was not entitled in the form of fees
4 for research she allegedly performed, which we believe was
5 never really performed, and never utilized by them.

6 And it's about an \$80 million or 80 million pound
7 lawsuit that we have. Taylor Wessing is not trying it, they
8 are our solicitors. We have, as a barrister, Bushbender
9 Sunny (ph) who is billed by Taylor Wessing as a
10 disbursement. That's how they handle it in the UK.

11 THE COURT: I was going to inquire about that.

12 MR. SHEEHAN: Yeah.

13 THE COURT: Because the disbursements are very,
14 very high.

15 MR. SHEEHAN: Yeah, and that's exactly why they
16 are high.

17 THE COURT: So these disbursements are really
18 legal fees?

19 MR. SHEEHAN: That's right. So -- but that's how
20 they do it there, and so that's how we pay it. We do get
21 Mr. Sunny's bills, we do examine those, SIPC certainly
22 examines Mr. Sunny's bills, and we look at them very
23 carefully.

24 It's a very -- even though it's fairly expensive,
25 this has been a wide range in litigation actively defended.

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1 The Madoff brothers were both directors. Their survivor,
2 Andrew is actively litigating this case with us in London.
3 It's an important case for us because it is, in fact, the
4 first case that we're going to try. So the, you know,
5 obviously looked upon very carefully by others as we try
6 this case. So we've been working very hard, not just
7 through our counsel, Taylor Wessing, and Mr. Sunny, but also
8 our team has been working very closely with them as well.

9 So that's why you see the significant amount of
10 time there. And as you see also, I've -- Kinggate
11 Management Limited was also part and parcel of this, because
12 what we needed was their assistance in connection with
13 discovery.

14 As I mentioned earlier, Serette & Grosso created
15 this architecture of Kinggate Management Limited, which
16 managed that fund, and then yet, the Kinggate funds, but
17 they also had someone who was supposed to be also doing the
18 work of evaluating assets and assisting Kinggate management.
19 It was also another sham. All of these were decide -- put
20 together to earn fees. That was called FIN, F-I-N, and FIN
21 is actually located in London, and we had the assistance of
22 Kinggate -- I'm sorry, of Taylor Wessing assisting us in
23 that endeavor.

24 So lots of activity going on, and of course, as
25 our solicitors in the UK, they've been of great assistance

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1 to us in advising us in connection with actions in BBI,
2 Bermuda, and Cayman, even though we also have counsel there,
3 because it is all part of the Commonwealth, and ultimately,
4 there is a continuity there we're getting assistance from
5 Taylor Wessing has been of great value to the trustee.

6 UGG Associates is located in Paris, France. What
7 is happening there is not dissimilar to what is occurring in
8 the -- in Austria. There is an ongoing criminal prosecution
9 taking place with regard to several of the banks that we've
10 sued, UBS and HSBC. We've been called in by the prosecutor,
11 and we have again filed papers to be a participant in those
12 proceedings. Again, Mr. Picard being recognized as a
13 victim.

14 And again, what we have achieved there is an
15 exchange of information that has been of great assistance to
16 the trustee in terms of discovery.

17 The Triay firm is located in Gibraltar. That's a
18 new firm, but essentially the same counsel. The counsel we
19 had before switched law firms since the last reporting
20 period. They are engaged in what is probably the longest
21 running litigation we've had in this case, that's Weskia
22 (ph).

23 Very early in the case, as Your Honor will recall,
24 we discovered a transfer of about \$150 million to Gibraltar.
25 Without repeating all the history associated with that, as

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1 Your Honor knows, approximately 70 million of that is now in
2 this courthouse, as a result of rulings by Your Honor, as a
3 result of the then pending Ruben decision, the entry of the
4 default by Your Honor against them. All those things
5 assisted us in getting that money back here.

6 There is a continuing fight over the balance of
7 the funds taking place in Gibraltar. We also have a fight
8 with regard to the effectiveness of the default there now
9 after Ruben. So it's an ongoing litigation there over the
10 balance of the funds. There have been hearings there
11 recently as several weeks ago. Our counsel goes obviously
12 from our office, but obviously we do need the assistance of
13 local counsel in Gibraltar, and that's what that fight has
14 all been about.

15 Werder, the Werder firm in Switzerland, there's
16 not much actually going, you see it's a very small
17 application there.

18 What we do have though is that we do try to get
19 discovery in Switzerland, and as Your Honor probably well
20 knows, that's not an easy thing to accomplish. The most
21 viable vehicle for us is the Hague Convention, which
22 routinely gets ignored by individuals there. So we're doing
23 our very best to get that information, but we have had
24 admittedly not great success.

25 Then we also have the firm of Browne Jacobson,

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1 that's the West firm I'm going to talk about here this
2 morning.

3 Browne Jacobson is our conflict counsel in the
4 United Kingdom. That has come up because we've run into
5 certain situations where Tara Wessen (ph) which is a global
6 law firm in connection with certain of the banks, where we
7 need conflict counsel to assist us. They've done that work,
8 as well as in addition to that, they've acted as our
9 insolvency counsel in connection with the MSLIL litigation.
10 They have a particular expertise in that category, and
11 interestingly enough, to go back to the MSLIL litigation for
12 a minute, they're actually challenging or were trying to
13 challenge the insolvency of it.

14 Basically trying to assert that the MSIL
15 organization was an independent corporation, and as an
16 independent corporation, it was actually owed money. If we
17 looked at the books, it looked as though it was owed money
18 by BMLIS. Our argument that it was an instrumentality of
19 the fraud didn't seem to register with the defendants.
20 Ultimately, it did register with the Court, so we're doing
21 well there, but we did need the assistance of our counsel at
22 Browne Jacobson to have success in that effort, and to
23 strike that defense.

24 It's interesting operating in the United Kingdom.
25 I know we're separated by a common language, but I have to

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1 tell you, we may emanate both from the common law, but I am
2 always astounded every once in a while with what the rule of
3 law is in the United Kingdom, and what we are up against in
4 trying to win those litigations.

5 They've also helped us, currently there's a trial
6 going on in Ireland, which we're watching very carefully,
7 among one of the major funds created by Sonya Coyen, THEMA
8 (ph). And THEMA has been sued by individual investors there
9 in Ireland, also HSBC. That trial has been going on now for
10 about three, four weeks. It will continue probably for
11 another three or four weeks. Browne Jacobson is monitoring
12 that trial for us, and we are obtaining the transcript
13 because we believe that there will be significant evidence
14 there that will assist eventually in the cases that we have
15 against all of the banks.

16 So in sum, Your Honor, that is the work that's
17 been performed by the foreign counsel. As I said, there's
18 no objection to it. And I believe Mr. Bell can speak to
19 this, but that there is support for all these applications
20 from the Securities Investor Protection.

21 MR. BELL: Your Honor, SIPC has submitted a
22 recommendation as to all international special counsel and
23 support -- after it's review and the appropriate adjustments
24 reflective of SIPC's comments, we support the amounts that
25 are in the applications that have been filed by the

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1 international special counsel, and ask the Court to enter an
2 order approving those payments.

3 THE COURT: Does anyone else want to be heard?

4 (No response)

5 THE COURT: The applications are granted.

6 MR. SHEEHAN: Your Honor, I'll be very brief with
7 regard to the remaining applications. There's, of course,
8 the application of Wedels Marx and of Young Conaway. Let me
9 speak very briefly, Mr. Nisselson is here in court, he
10 appeared already before Your Honor in another matter, as is
11 Howard Signman (ph), and I want to mention also Amy Longvow
12 (ph), all three of those people have been just spectacular
13 in terms of their support for the trustee throughout the
14 course of this liquidation proceeding. The work that
15 they've done is exemplary, first rate. We've had nothing
16 but great results, as a result of the work that they've done
17 in the various litigations and the support they've given to
18 us. Young Conaway is of the same quality. Without
19 reservation, we support their application as I do -- as I
20 know the SIPC does as well. And I'll turn again to Mr.
21 Bell.

22 MR. BELL: Your Honor, we make the same comments.
23 SIPC has reviewed, we would note in the SIPC recommendation
24 on the Windels' application at paragraph 3 of the
25 recommendation, Windels has been very accommodating and

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1 accepting SIPC suggestions or reductions, and they lay out
2 the numbers, which I think are of a significant nature that
3 they have taken in light of our comments.

4 And similarly with Young Conaway and SIPC supports
5 the payment of the amounts that are reflected in those two
6 applications, and we would ask the Court to enter an order.

7 THE COURT: Does anyone else want to be heard?

8 (No response)

9 THE COURT: The applications are granted.

10 MR. SHEEHAN: The last, but certainly not least,
11 Your Honor, is the application of Mr. Picard as trustee, and
12 the firm is Baker Hostetler, as his counsel.

13 Your Honor is very familiar with the work of both
14 Mr. Picard and the trustee, we actively appeared before Your
15 Honor, and with some degree of notoriety in the district
16 court and in the Second Circuit, so I think Your Honor is
17 very familiar with a lot of the activity that took place
18 during the reporting period, which did involve many motions
19 to withdraw the reference before Judge Rakoff, as well as
20 activity here before Your Honor.

21 I would actually defer to the report that we filed
22 recently with Your Honor and our fee application,
23 highlighted with only one actually major event that took
24 place during the reporting period, and that is, is due to
25 the efforts of Mr. Picard, we were able to distribute two

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1 and a half billion dollars in September to the victims in
2 this case.

3 I think it was an extremely significant milestone
4 in the case, culminating from a major effort by the trustee
5 and his counsel, with regard to a variety of the litigation,
6 much of which I talked about here today, but much, much more
7 of which we engage in every day which I did not talk about
8 here today, but which is adequately detailed in our
9 application to Your Honor.

10 That type of result, getting that type of
11 collection here, I think as I say, truly representative of
12 the quality of the work, I submit to Your Honor, that has
13 been done by the trustee and his counsel, and I would
14 respectfully request that our applications be granted. Mr.
15 Bell.

16 MR. BELL: Your Honor, SIPC has reviewed all the
17 invoices that Baker has submitted for this five month period
18 from July 1st, 2012 through November 30th, 2012, that
19 underlie Baker's application before the Court.

20 Baker has agreed, you know, as have all applicants
21 to this Court, to a basic ten percent reduction in their
22 normal billing rates. Secondly, SIPC comments have been
23 taken under consideration by the applicants, and appropriate
24 adjustments have been made.

25 By will of this illustration, I call the Court's

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1 attention to the Baker application and the SIPC
2 recommendation thereon, particularly at paragraph 5, where
3 it lays out the significant reduction that Baker has made in
4 response to SIPC's recommendation, not only the ten percent
5 reduction, which is at a high number, but also the over \$3.3
6 million adjustment that Baker has made, in response to
7 SIPC's suggestions.

8 SIPC Section 78(eee)(B)(5)(C) vests in SIPC a
9 great responsibility in reviewing these applications and all
10 the underlying invoices. And, you know, in this case, as
11 noted in paragraph 277, page 84 of the Baker application,
12 the trustee has determined that no reasonable expectation
13 that the general estate will be sufficient to make a
14 distribution to general creditors and pay administrative
15 expenses.

16 And as we have had discussions over the last ten
17 applications, I know the Court is extremely aware of this
18 unique situation that Congress has vested in SIPC, and we
19 take that responsibility at the highest level, you know, it
20 has always been my fondest wish that when we get to a
21 hundred percent, we pass this responsibility back to the
22 Court, and we make our recommendations, which you take with
23 hopefully significant weight. But until that moment in
24 time, in this case where the trustee has made that
25 determination, SIPC's recommendation is what's there in this

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1 situation, and we recommend that Baker's application be
2 granted as submitted. And there were two other
3 applications, one by Latanzi (ph) and one by Greenfield of
4 insignificant amounts, but we would -- we've reviewed them,
5 and we would support those too also, Your Honor, and ask
6 that you issue the appropriate order.

7 Do you have any questions, Your Honor?

8 THE COURT: Well, no, it's very clear, as it has
9 been with respect to the prior applications, that until we
10 reach, and if we ever reach that point in time where the
11 word shall when linked to the recommendation of SIPC may
12 possibly be no longer operative. But as it stands right
13 now, the Court so must require it, to grant the applications
14 based upon the SIPC recommendation.

15 I do have one question, and since Mr. Picard is
16 here, and I understand Mr. Picard's billings are, to some
17 extent, statutory, but he also has a relationship with Baker
18 & Hostetler, and Mr. Picard, I see the amount of your
19 expenses for this period of time are quite substantial, and
20 well over a million dollars, can you explain that?

21 MR. PICARD: Your Honor, my expenses are not
22 anywhere near that, in fact, I didn't put in any expenses
23 during the --

24 THE COURT: That's strange, then maybe I misread
25 the applications that were before me or the summaries, would

1 seem to indicate --

2 MR. PICARD: Those would be the firm's request,
3 Your Honor, not mine.

4 THE COURT: Well, that's what I'm asking for the
5 explanation.

6 MR. BELL: Your Honor, SIPC has reviewed all those
7 requests and I know there have been, if you -- at paragraph
8 5 of our recommendation, there have been reductions by
9 Baker --

10 THE COURT: The way these have been set up in the
11 columns, the 1.158 million seems to be ascribed to Mr.
12 Picard.

13 MR. SHEEHAN: If you look at Exhibit D of the
14 application, Your Honor, that's the expense summary by Baker
15 Hostetler.

16 THE COURT: I'm looking at a summary sheet, so
17 that's the application.

18 MR. PICARD: Well, Your Honor, if I could, I could
19 submit you Exhibit D so you could see what we're talking
20 about.

21 THE COURT: I accept the representations of Mr.
22 Picard and everyone else.

23 MR. PICARD: Thank you, Your Honor.

24 THE COURT: The applications are granted, as
25 requested.

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1 MR. SHEEHAN: May I submit the order, Your Honor?

2 THE COURT: Sure.

3 MR. SHEEHAN: Inadvertently I did not bring a
4 disk, but I'll have the order submitted.

5 THE COURT: I've approved the order.

6 MR. SHEEHAN: Thank you, Your Honor.

7 MR. BELL: Thank you, Your Honor.

8 MR. PICARD: Thank you.

9 (Whereupon, the proceedings were concluded at 10:51 AM)

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CERTIFICATION

2

3 I, Sheila G. Orms, certify that the foregoing is a
4 correct transcript from the official electronic sound
5 recording of the proceedings in the above-entitled matter.

6

Dated: May 30, 2013

7

Sheila
Orms



Digitally signed by Sheila Orms
DN: cn=Sheila Orms, o, ou,
email=digital1@veritext.com,
c=US
Date: 2013.07.18 14:32:19
-04'00'

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signature of Approved Transcriber

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Veritext

14

200 Old Country Road

15

Suite 580

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Mineola, NY 11501

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